

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 796

Post-Employment Restrictions for Certain NCUA Examiners

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: NCUA is adding a new part to NCUA's regulations to implement new, post-employment restrictions that will apply to certain senior NCUA examiners starting December 17, 2005. The final rule prohibits senior NCUA examiners, for a year after leaving NCUA employment, from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for a total of two or more months during their last 12 months of NCUA employment.

DATES: Effective December 17, 2005.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney,
Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

On December 17, 2004, Congress enacted the Intelligence Reform Act, Public Law 108-458, creating new, post-employment restrictions for certain federal employees who examine banks and credit unions. Pub. L. No. 108-458, §6303(c), 118 Stat. 3754 (2004). The law amended the Federal Credit Union (FCU) Act and requires NCUA to prescribe a rule implementing this section for federal examiners of federally insured credit unions. 12 U.S.C. 1786(w). The law also requires NCUA to consult to the extent it deems necessary with the federal banking agencies. In July, the Board issued a proposed rule with a 60-day comment period on post-employment restrictions for certain NCUA examiners to implement the amendments. 70 FR 43800, Jul. 29, 2005. NCUA reviewed and considered all comments received and, except for two minor clarifications, is issuing the final rule unchanged from the proposed rule. As with the proposed rule, NCUA staff consulted with an interagency group so that the final rule is consistent and comparable with the final rule the federal banking agencies are issuing.

The post-employment restrictions will apply to senior examiners starting December 17, 2005. For a year after leaving NCUA employment, senior examiners will be prohibited from accepting employment with a federally insured

credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

The final rule implements the statutory provisions by giving NCUA the authority to issue administrative orders removing a person from a position with a federally insured credit union and barring further participation with that credit union or any federally insured credit union for up to five years. Also, the final rule implements the statute by imposing civil money penalties for violations of up to \$250,000. The rule also implements the statutory provision authorizing the NCUA Board to grant waivers if the NCUA Chairman certifies that granting the waiver would not affect the integrity of NCUA's supervisory program.

NCUA received eight comments: three from national trade groups; one from a state trade group; three from federal credit unions; and one from a state-chartered credit union. Four of the eight commenters fully supported the proposed rule and believe NCUA properly implemented the new statutory post-employment restrictions.

Two commenters thought the rule should be less restrictive and two commenters thought it should be more restrictive. Since the restrictions are statutory, the regulation cannot be less restrictive. One commenter who thought the post-employment restriction should be more restrictive supported a two-year cooling

off period during which a senior examiner could not work for the credit union for which he or she had a substantial role in the supervision. The other commenter who thought the proposed rule should be stricter recommended NCUA expand the proposed “senior examiner” definition to include any examiners involved in a credit union in the last twelve months of their NCUA employment and at a minimum, examiners-in-charge. The commenter also proposed NCUA implement additional penalties for NCUA examiners seeking employment with credit unions.

The final rule retains the one-year cooling off period as specified in the statute. The final rule also retains the definition of NCUA senior examiner to whom the restriction will apply with one wording change from “commissioned” to “authorized.” 12 CFR 796.2. Congress intended the one-year post-employment prohibition to apply to examiners with a “meaningful” relationship to the credit union.¹ Consistent with that intent, the final rule defines a “senior examiner” as an NCUA employee, authorized as an examiner, who has continuing, broad, and lead responsibility for examining a particular federally insured credit union, routinely interacts with officers or employees of the credit union, and devotes a substantial portion of his or her time to supervising or examining that credit union. Finally, the wording of the final rule in section 796.3 has been slightly modified to reflect that the cooling off period applies to a senior examiner who performed work, including onsite or offsite work, for a federally insured credit union for a total of two months or more in his or her last year of NCUA employment.

¹ 150 CONG. REC. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The final rule prohibits senior examiners from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment. The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board has determined that the final rule does not contain any information collections and, therefore, no PRA number is required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of

Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 796

Conflicts of interest, Credit unions, Ethical conduct, Government employees.

By the National Credit Union Administration Board on November 29, 2005.

Mary F. Rupp

Secretary of the Board

Accordingly, NCUA proposes to add a new 12 CFR part 796 as follows:

Part 796 – Post-Employment Restrictions for Certain NCUA Examiners

Sec.

796.1 What is the purpose and scope of this part?

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796.3 What special post-employment restrictions apply to senior examiners?

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796.6 What other definitions and rules of construction apply for purposes of this part?

Authority: 12 U.S.C. 1786(w).

§ 796.1 What is the purpose and scope of this part?

This part identifies those National Credit Union Administration (NCUA) employees who are subject to the special, post-employment restrictions in section 1786(w) of the Act and implements those restrictions as they apply to NCUA employees.

§ 796.2 Who is considered a senior examiner of the NCUA?

For purposes of this part, an NCUA employee is considered to be the “senior examiner” for a federally insured credit union if the employee—

(a) Has been authorized by NCUA to conduct examinations or inspections of federally insured credit unions on behalf of NCUA;

(b) Has continuing, broad, and lead responsibility for examining or inspecting that federally insured credit union;

(c) Routinely interacts with officers or employees of that federally insured credit union; and

(d) Devotes a substantial portion of his or her time to supervising or examining that federally insured credit union.

§ 796.3 What special post-employment restrictions apply to senior examiners?

(a) Senior examiners of federally insured credit unions. An officer or employee of the NCUA who performs work (onsite or offsite) as the senior examiner of a federally insured credit union for a total of two or more months during the last 12 months of individual's employment with NCUA may not, within one year after leaving NCUA employment, knowingly accept compensation as an employee, officer, director, or consultant from that credit union.

(b) Example. An NCUA resident corporate credit union examiner assigned to work at a federally insured, corporate credit union for two or more months during the last 12 months of that individual's employment with NCUA will be subject to the one-year prohibition of this section.

§ 796.4 When do these special restrictions become effective and may they be waived?

The post-employment restrictions in section 1786(w) of the Act and §796.3 do not apply to any current or former NCUA employee, if—

(a) The individual ceased to be an NCUA employee on or before December 17, 2005; or

(b) The Chairman of the NCUA Board certifies in writing and on a case-by-case basis that granting the senior examiner a waiver of the restrictions would not affect the integrity of the NCUA's supervisory program.

§ 796.5 What are the penalties for violating these special post-employment restrictions?

(a) Penalties under section 1786(w)(5) of the Act. An NCUA senior examiner who violates the post-employment restrictions set forth in § 796.3 can be—

(1) Removed from participating in the affairs of the relevant credit union and prohibited from participating in the affairs of any federally insured credit union for a period of up to five years; and, alternatively, or in addition,

(2) Assessed a civil monetary penalty of not more than \$250,000.

(b) Other penalties. The penalties in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in §796.3 also may be subject to other administrative, civil, and criminal remedies and penalties as provided in law.

§ 796.6 What other definitions and rules of construction apply for purposes of this part?

For purposes of this part, a person shall be deemed to act as a “consultant” for a federally insured credit union or other company only if the person works directly on matters for, or on behalf of, such credit union.